



Washington Legal Foundation
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October 1, 2020

WLF Month in Review

This WLF Litigation Division feature highlights WLF's court filings, as well as decisions issued in response to WLF's filings. In this edition, we list September 2020 filings.

New Filings

- WLF asks the Supreme Court to review a securities class action with far-reaching implications. (***Goldman Sachs Group v. Arkansas Teacher Retirement System***)
- WLF urges the Ninth Circuit to vacate a wildly overbroad trial court order that blocks all new oil and gas projects, nationwide. (***N. Plains Res. Council v. Corps***)
- WLF asks the Supreme Court to adhere to the statutory text of the Telephone Consumer Protection Act. (***Facebook v. Duguid***)
- WLF urges the Seventh Circuit not to expand the Clean Water Act's reach over certain groundwater releases. (***Prairie Rivers Network v. Dynegy Midwest Generation, LLC***)
- WLF asks the Supreme Court to limit the Alien Tort Statute's reach of liability. (***Nestlé USA, Inc. v. Doe***)
- WLF urges the Texas Supreme Court to apply the Communication Decency Act's free-speech protection as written. (***In re Facebook, Inc.***)

Litigation is the backbone of WLF's public-interest mission. We litigate nationally before state and federal courts and agencies. Our team, often with the *pro-bono* assistance of leading private attorneys, litigates original actions, files *amicus* briefs, participates in the regulatory process, and provides constitutional analysis before federal agencies and Congress.

If you become aware of a pending legal or regulatory matter in which WLF's unique public-interest participation would advance economic liberty, please contact WLF Vice President of Litigation, Cory Andrews.

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NEW FILINGS

WLF asks the Supreme Court to review a securities class action with far-reaching implications.

Goldman Sachs Group v. Arkansas Teacher Retirement System

On September 24, WLF asked the Supreme Court to review, and ultimately to vacate, a Second Circuit decision in a securities class action with far-reaching implications. Under Supreme Court precedent, a defendant can rebut the presumption of class-wide reliance in a securities class action by showing that an alleged misrepresentation did not actually affect the stock's market price. The Supreme Court has also made clear that a defendant is entitled to rebut the reliance presumption at the class-certification stage. The Second Circuit violated those rules in this case. Holding that such an inquiry would necessarily reach the merits of materiality, the appeals court barred the defendant from being able to rebut price impact by pointing to the generic nature of the alleged misstatements (*e.g.*, Goldman Sachs's aspirational mission statement). As WLF contends in its *amicus* brief, that decision, if left to stand, would undermine Congress's intent to limit the proliferation of meritless securities class actions. WLF's *amicus* brief was prepared with the *pro bono* assistance of Lyle Roberts and Daniel Sachs at Shearman & Sterling LLP.

WLF urges the Ninth Circuit to vacate a wildly overbroad trial court order that blocks all new oil and gas projects, nationwide.

N. Plains Res. Council v. Corps

On September 23, WLF asked the Ninth Circuit to vacate a wildly overbroad district court order that blocks all new oil and gas line projects, nationwide. As WLF contends in its *amicus* brief, the plaintiffs here lacked standing to obtain nationwide relief. Under Article III, a court may only resolve the case or controversy between the parties before it. A lone district court judge has no authority to block implementation of nationwide governmental policy. Nor did the plaintiffs attempt to show—nor could they—that they are somehow injured by every new oil and gas project approved nationwide. Rather than issue a nationwide injunction, the trial court should have simply remanded to the agency and its experts to fix the supposed procedural defect.

WLF asks the Supreme Court to adhere to the statutory text of the Telephone Consumer Protection Act.

Facebook v. Duguid

On September 10, WLF filed an *amicus* brief urging the Supreme Court to adhere to textualist principles of statutory interpretation, even when the law at issue regulates fast-moving technology. The petitioner in the case, Facebook, argues that the plain words of the Telephone Consumer Protection Act require that an autodialer use “a random or sequential number generator.” Some courts, however, have decided that the TCPA's definition of an autodialer requires merely that a device be able to store telephone numbers and then dial them. Those courts have been all too quick to enlist the TCPA's overall “purpose” and Congress's general “intent” in their cause. WLF's brief observes that the case fits within a larger pattern of unwarrantable expansion of the TCPA. In particular, courts have expanded the TCPA to cover text messages, even though the statute plainly covers only *calls*. Although it might seem like a good idea for a court to try to “fix” the TCPA to keep up with the times, doing so, WLF's brief argues, simply invites Congress to put off the hard work of crafting solutions itself.

WLF urges the Seventh Circuit not to expand the Clean Water Act's reach over certain groundwater releases.
Prairie Rivers Network v. Dynegy Midwest Generation, LLC

On September 8, WLF urged the Seventh Circuit to affirm a trial court decision that refused to expand the Clean Water Act's (CWA) reach over certain groundwater releases. As WLF contends in its *amicus* brief, construing the CWA to require a National Pollution Discharge Elimination System (NPDES) permit for the groundwater releases here would displace Congress's regulation of such releases under the Resources Conservation and Recovery Act (RCRA) and the EPA's Coal Combustion Residuals (CCR) Rule, both of which govern groundwater releases of coal ash. It would also undermine comprehensive state regulation of groundwater, leading to the kind of broad expansion of NPDES jurisdiction that the Supreme Court, in *County of Maui v. Hawaii Wildlife Fund*, recently rejected. WLF's *amicus* brief was prepared with the *pro bono* assistance of Bill Brownell, Elbert Lin, Nash Long, Brent Rosser, and Melissa Romanzo with Hunton Andrews Kurth LLP.

WLF asks the Supreme Court to limit the Alien Tort Statute's reach of liability.
Nestlé USA, Inc. v. Doe

On September 8, WLF urged the Supreme Court to overturn a Ninth Circuit decision that would allow activists to impose liability on U.S. entities for aiding and abetting a third-party's alleged human rights violations overseas. In an *amicus* brief supporting U.S.-based chocolate manufacturers, WLF asked the court to put an end to such lawsuits under the Alien Tort Statute (ATS). WLF contends that the Ninth Circuit, by permitting these suits to proceed, disregarded the Constitution's crucial limits on a federal court's ability to imply a new cause of action under the ATS. As WLF's *amicus* brief shows, whether the ATS should supply a remedy for aiding and abetting is a decision best left to Congress, not the Judiciary. WLF's brief was joined by the Allied Educational Foundation.

WLF urges the Texas Supreme Court to apply the Communication Decency Act's free-speech protection as written.
In re Facebook, Inc.

On September 4, WLF filed an *amicus* brief urging the Texas Supreme Court to faithfully apply section 230 of the Communications Decency Act. Section 230 generally protects anyone on the web from being held liable for the speech of a third party. It is a straightforward immunity that has been applied consistently across several decades and many dozens of cases. WLF's brief asks the Texas high court to apply section 230 as written in a case in which the lower courts effectively set the statute aside. The plaintiffs pointed to recent statutory amendments that allow certain *federal* civil claims and state *criminal* claims to be brought against platforms. The plaintiffs, however, bring only *state civil* claims that remain barred by section 230. WLF is grateful to Scott Keller, his associate Jeremy Evan Maltz, and Baker Botts L.L.P. for their *pro bono* assistance with the brief.